IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

Bail Appl..No. 4338 of 2007(P)

CRIME NO.67 OF 2007 OF POTHANIKKAD POLICE STATION

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: PETITIONER/ACCUSED

PAREETH, AGED 68, S/O. MOITHEEN,
KURINJILAKADU HOUSE, PALLARIMANGALAM,
KOTHAMANGALAM, ERNAKULAM DISTRICT.

BY ADV. SRI.C.P.UDAYABHANU

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
THE S.I. OF POLICE, POTHANIKKAD POLICE STATION,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY DIRECTOR GENERAL OF PROSECUTION SRI.P.G.THAMPI

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 20/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.4338 of 2007

Dated this the 20th day of July, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations in a crime registered, inter alia, under Section 307 I.P.C. The crux of the allegations against the petitioner is that he unleashed an attack on his nephew, the victim/defacto complainant with a dangerous weapon on 25.04.07. Very serious injuries were suffered by the victim. The victim was brought to the hospital from the scene of the crime by the people who assembled at the scene of the crime. There are eye witnesses also. The petitioner was allegedly seen fleeing from the scene of the crime with the blood stained dangerous weapon with which the injury was allegedly inflicted. Investigation is in progress. The petitioner apprehends imminent arrest.

2. During the vacation, the petitioner came to this Court and sought anticipatory bail. By order dated 15.05.2007, anticipatory bail was granted to the petitioner. The Section of offences were not correctly shown in the anticipatory bail order. The Investigating Officer, it would appear, was reluctant to accept the order of anticipatory bail as one covering the crime in question. The prosecution sought clarification. The petitioner sought clarification. The injured victim applied for cancellation of bail. All those petitions

were considered together and was disposed of by another Bench of this Court by order dated 15.06.07. At that stage, the petitioner, evidently to avoid any further controversy, chose to withdraw the original application for anticipatory bail and the same was dismissed bringing to rest all the controversies.

3. Thereafter, the petitioner applied for anticipatory bail before the learned Sessions Judge. The learned Sessions Judge by order dated 03.07.2007 dismissed the said application. The petitioner has hence come to this Court again with a prayer for anticipatory bail.

4. The learned counsel for the petitioner submits that the allegations are totally false. The incident did not at all take place in the manner alleged by the defacto complainant in this case. There is a counter case registered at the instance of the petitioner's daughter. Therein, an allegation has been raised that a different incident took place in the house of the petitioner, where the petitioner and his daughter were the victims of aggression and the defacto complainant/injured in this case was the aggressor. That counter case was registered only on 28.04.07.

5. The learned counsel for the petitioner, in these circumstances, submits that directions under Section 438 Cr.P.C may be issued in favour of the petitioner. The learned Public Prosecutor vehemently opposes the said prayer. The learned Public Prosecutor

has taken me through the nature of injuries suffered by the victim. The case diaries in both the crimes have been placed before me. I have gone through the same. The petitioner and his daughter have no explanation as to how the victim/defacto complainant had suffered injuries.

6. I have considered all the relevant inputs. Powers under Section 438 Cr.P.C are to be invoked only sparingly and in exceptional cases in aid of justice. Such jurisdiction cannot certainly be invoked as a matter of course. By granting an order of anticipatory bail, the superior courts - Sessions Court and the High Court, are virtually converting a non bailable offence into a bailable offence subject to conditions in a given and particular case. When powers of arrest are about to be misused with oblique or questionable motives, such jurisdiction can be invoked. I find absolutely no circumstances int his case which would justify this Court resorting to such powers under Section 438 Cr.P.C. All the available indications do not at all persuade me to invoke such powers.

7. This, I am satisfied, is a fit case where the petitioner must appear before the learned Magistrate having jurisdiction or the Investigating Officer and then seek regular bail in the normal and ordinary course.

8. This application for anticipatory bail is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-